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11 Attorneys for Plaintiffs

12 **IN THE UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN JOSE DIVISION**

15  
16 INDER SINGH, et al.,

17  
18 Plaintiffs,

19 vs.

20 KOGENT CORPORATION, et al.,

21 Defendants.

) Case No. 11-CV-03934 EJD  
)  
)

22 ) **NOTICE AND MOTION FOR LEAVE**  
23 ) **TO FILE FIRST AMENDED**  
24 ) **COMPLAINT**

25 ) Date: July 6, 2012  
26 ) Time: 9:00 a.m.  
27 ) Courtroom: 2112  
28 ) Judge: Hon. Edward J. Davila

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24 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

25 PLEASE TAKE NOTICE that on Tuesday, July 6, 2012, at 9:00 a.m., or as soon as they  
26 may be heard, in Room 2112 in the above referenced courthouse, located at 280 S. First Street,  
27 San Jose, California, Plaintiffs will and hereby do move the court pursuant to Fed. R. Civ. P.  
28 15(a)(2) for leave to file their first amended complaint.

**MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

1 This Motion is based upon the following Memorandum of Points and Authorities.  
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6 Dated: April 30, 2012

By: /s/ Avonte D. Campinha-Bacote

7 Avonte D. Campinha-Bacote  
8 Tiffany N. Romine

9 *Attorneys for Plaintiffs*  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiffs seek leave to amend their complaint to add Kogent BI Builders and RJT Compuquest, Inc. as defendants to the present action. After filing the complaint it was discovered that RJT Compuquest, Inc. had acquired all or part of Kogent Corporation and/or one or more of its affiliates/subsidiaries. As such, RJT Compuquest may have assumed some or all of Kogent Corporation's assets and liabilities, including but not limited to the debts owed to the Plaintiffs, thus making it liable, in whole or in part, for the multiple breaches of contract caused by Defendants Kogent Corporation, Sudhir Saxena, and SMB Builders Intelligence Builders Inc. Plaintiffs' amended complaint seeks to add Kogent BI Builders to the action because one or more of the contracts entered into with the Plaintiffs, specifically Plaintiffs Anuj Sharma and KAAS Consulting Inc., names Kogent BI Builders as a party. In addition, Plaintiffs seek to add a cause of action for breach of false promise, as well as clarify certain issues brought up in Defendants' Motions to Dismiss and Motion for a More Definite Statement, such as specifying which breaches of contract are being alleged against certain defendants, as well as including allegations indicating that one or more Plaintiffs have performed work in the US under their contracts with the Defendants. Plaintiffs timely file this motion in accordance with the Court's Case Management Order (Doc. 49).

### **II. ARGUMENT**

Fed. R. Civ. P. 15(a)(2) states that a party can amend a pleading after the time for a response has expired only with leave of court or consent of the opposing party. Leave should be given freely when justice so requires. *See* Fed. R. Civ. P. 15(a)(2). The grant or denial of a

request to amend a complaint is left to the broad discretion of the trial court. *General Electric Co. v. Sargent & Lundy*, 916 F.2d 1119, 1130 (6th Cir. 1990). In exercising its discretion, the trial court may consider such factors as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment [and] futility of the amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). The United States Supreme Court held that rule 15(a) should be interpreted liberally and, in the absence of undue delay, bad faith, or dilatory motive on the part of the movant, leave should be granted. *Inhalation Plastics v. Medex Cardio-Pulmonary, Inc.*, 2010 U.S. Dist. Lexis 114687, \*16 (S.D. Oh, Oct. 28, 2010), *citing Davis*, 371 U.S. at 178.

Justice requires that Plaintiffs be afforded leave to amend their Complaint. Pursuant to the Court’s Case Management Order (Doc. 49), Plaintiffs timely file the present motion. Furthermore, litigation is in its early stages, as little to no discovery has been done. Apart from one set of interrogatories, request for admissions, and request for production of documents propounded by the Defendants a few days ago, no discovery has been done. Consequently, Defendants will not be prejudiced by this amendment, and Plaintiffs file this motion in good faith.

### III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion for Leave to Amend the Complaint. A copy of the Amended Complaint is attached.

1 Dated: April 30, 2012

Respectfully submitted,

2  
3 /s/ Avonte D. Campinha-Bacote  
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17 *Attorneys for Plaintiffs*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of April, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner to those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Avonte Campinha-Bacote

Avonte D. Campinha-Bacote